



Office of the Attorney General
State of Texas

December 6, 1995

DAN MORALES
ATTORNEY GENERAL

Mr. John P. McFall
Chief of Police
City of Shavano Park
99 Saddletree Road
San Antonio, Texas 78231-1412

OR95-1371

Dear Chief McFall:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 32365.

You received an open records request for eight items of information on March 3, 1995. You requested a decision from this office in a letter postmarked March 15, 1995. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Sections 552.301 and 552.302 of the Government Code require a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 324 (Tex. App.--Houston [1st Dist.] 1984, no writ). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *Hancock*, 797 S.W.2d at 381.

In this case, we conclude that you have not shown compelling reasons to withhold the requested information. You object to releasing two of the requested items: a current list of police officers and any resignations or dismissals from the police department.¹

¹Because you raise no objections to releasing the other requested items, we assume the city has released them to the extent that they exist.

You argue that sections 552.102, 552.103, 552.108, and 552.117 of the Government Code except these items from disclosure.² However, the mere applicability of section 552.103 or section 552.108, without more, is not a compelling reason to withhold information. See Open Records Decision No. 473 (1987) at 2, cf. Open Records Decision No. 586 (1991) at 2-3 (predecessor to section 552.108 becomes compelling reason to withhold information when interest of another governmental body at issue). In addition, although the applicability of either section 552.102 or section 552.117 is a compelling reason to withhold information, we conclude that neither section applies to the requested information.³

Section 552.102 protects information in a personnel file only if its release would invade the privacy of the employee under the test articulated for common-law privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref'd n.r.e.). Under common-law privacy, information may be withheld if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The identity of a police officer is not highly intimate or embarrassing. See Open Records Decision No. 557 (1990) at 5. In addition, any resignations or dismissals are of a legitimate concern to the public. See Open Records Decision No. 444 (1986) at 4. Thus, section 552.102 does not protect the requested information. Furthermore, because the requested information is not private information, you do not need specific authorization from your employees to release it. See Open Records Decision No. 470 (1987) at 2-3.

Section 552.117(1)(b) excepts from disclosure the home addresses and home telephone number of peace officers. In this case, however, the requestor is seeking only a list of the identities of current police officers; he has not requested their home addresses and telephone numbers. Thus, although you must not release the home addresses and telephone numbers of the officers, you must release their identities.

²In your second letter to this office, you also raise section 552.109. However, any information protected by section 552.109 would also be protected by section 552.102 in this case. See Open Records Decision No. 506 (1988) at 3. Therefore, we do not address section 552.109 here.

³We also note that the identity of the requestor is irrelevant to the availability of the information in situations like this one. The Open Records Act deals primarily with the availability of information to members of the public. Open Records Decision No. 507 (1988) at 3. The identity of the requestor is relevant only when the Open Records Act or some other statute creates a special right of access to the requested information. In this case, no special right of access to the requested information exists. Thus, you may withhold the requested information from the requestor in this case only if you may also withhold it from all other members of the public.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script that reads "Margaret A. Roll".

Margaret A. Roll
Assistant Attorney General
Open Records Division

MAR/rho

Ref.: ID# 32365

Enclosures: Submitted documents

cc: Dr. Richard Lazor
101 Ponca Bend
San Antonio, Texas 78231
(w/o enclosures)